

EXHIBIT 3

Duggan, Ph.D., Mark G.
Washington, DC

July 14, 2008

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -
IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

Volume I

Videotaped deposition of MARK G. DUGGAN PH.D.

Washington, D.C.

Monday, July 14, 2008

9:00 a.m.

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Duggan, Ph.D., Mark G.

July 14, 2008

Washington, DC

| | |
|---|---|
| <p style="text-align: right;">Page 46</p> <p>1 But my understanding is that the distinction as 2 between my phrase difference as an economist and the 3 legal term damages, that they are -- are they exactly 4 synonymous? They're essentially -- that that is 5 reflective of damage. 6 Q. Are they the same, difference and damage? 7 MR. LAVINE: Object to form. 8 A. I would -- once again, there's a lot that 9 goes into my calculation of this difference value. So 10 it's my understanding that -- as an economist, it 11 represents the -- may I read from my report or -- 12 Q. Sure. 13 A. "What the federal government reimbursed for 14 certain pharmaceutical products, provided to Medicaid 15 and Medicare recipients during the eleven year period 16 and what the federal government would have reimbursed 17 for the same products during the time period if prices 18 reflective of the actual prices at which Abbott was 19 transacting business had been used for the AWP, WAC 20 and direct price of Abbott products." 21 Q. Are you saying that damages is not an 22 economic term?</p> | <p style="text-align: right;">Page 48</p> <p>1 A. Just it -- I think the analysis that I 2 undertake here is very similar to the analysis that 3 I've undertaken in a large share of my empirical work, 4 which is to get at the causal effect of one or more 5 things on an outcome variable of interest. And so I 6 believe that my prior research is very relevant for 7 this analysis. 8 Q. Move to strike as nonresponsive. 9 Apart from your work -- let me ask this 10 question again. Strike that. 11 Have you written any articles regarding the 12 calculation of damages in litigation? 13 A. I've produced the two reports that we've 14 talked about here today. 15 Q. Have you read any economic or legal 16 scholarship regarding what should be in a damage 17 calculation used for litigation? 18 MS. THOMAS: Objection to form. 19 A. There are many documents that I have read 20 in the course of my career and also in connection with 21 this case. And so -- but it's hard for me to pick out 22 a particular study right now.</p> |
| <p style="text-align: right;">Page 47</p> <p>1 A. That's not what I'm saying. It is 2 primarily a legal term in the context of litigation. 3 Q. What experience do you have, Dr. Duggan, in 4 calculating and doing damage calculations for 5 litigation? 6 MR. LAVINE: Objection to form. 7 A. So in the -- we've talked so far about my 8 work in the Texas case and my work here in the federal 9 case and in which the Texas work that I did was quite 10 analogous to what I'm doing here in the federal case. 11 And so I would consider that to be experience in 12 calculating -- in conducting analyses that the court 13 would find useful in assessing damages. 14 Q. Is it fair to say that apart from this case 15 and your work in the Texas litigation you've never 16 done work to assist a court in calculating damages in 17 a civil suit? 18 MR. LAVINE: Objection to form. 19 A. That's correct. 20 Q. Have you ever published any articles on 21 that topic? 22 MR. LAVINE: Objection to form.</p> | <p style="text-align: right;">Page 49</p> <p>1 Q. When you set out to do the engagement in 2 Texas and again in the engagement in this case, did 3 you make any effort to review literature regarding how 4 to calculate damages in litigation? 5 A. I believe that my report outlines in a very 6 transparent way what it is that my analysis does. And 7 so I reviewed some documents related to AWP 8 litigation, reports by other experts, for example, 9 quite some time ago. But I believe that what I set 10 out to do in this report and the assumptions that I 11 made in carrying this out are very clear. 12 And to the extent that the court or others 13 assess -- this report is, this algorithm that I have 14 designed, is something that I believe is well-suited 15 to the question that I posed, which is how much more 16 did the federal government spend for the products. 17 And I could go through the whole thing. 18 Q. I would actually like you to go through the 19 whole thing. 20 A. Okay. "What the federal government 21 reimbursed for certain pharmaceutical products 22 provided to Medicaid and Medicare recipients during</p> |

13 (Pages 46 to 49)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Duggan, Ph.D., Mark G.

July 14, 2008

Washington, DC

| Page 214 | Page 216 |
|--|--|
| <p>1 MR. LAVINE: Objection to form.</p> <p>2 A. The analyses in my report shed light on how</p> <p>3 federal government expenditures for Abbott products</p> <p>4 and the J codes listed in the complaint would have</p> <p>5 differed if Abbott had reported the alternative prices</p> <p>6 that I described in my report to First Databank, Red</p> <p>7 Book and so forth and the state Medicaid agencies and</p> <p>8 the federal government used those numbers. So</p> <p>9 absolutely I do believe that the -- given the</p> <p>10 assumptions that I outline in my report, the report</p> <p>11 estimates the impact of alternative prices on federal</p> <p>12 government spending, holding other factors constant.</p> <p>13 And I should note that in some of these</p> <p>14 other papers that I mention here I perform -- some of</p> <p>15 these other publications, I perform similar analyses.</p> <p>16 So for example had a Medicaid recipient not been in an</p> <p>17 HMO, but instead been in a fee for service, what would</p> <p>18 government spending otherwise have been. Had a</p> <p>19 Medicaid recipient not taken this specific</p> <p>20 prescription drug, what would Medicaid spending</p> <p>21 otherwise have been and so forth. That is quite</p> <p>22 consistent with much of my previous research, the</p> | <p>1 subject of your testimony?</p> <p>2 MR. LAVINE: Objection to form.</p> <p>3 A. Well, once again, I'm not certain about</p> <p>4 what I will end up discussing in testimony. But for</p> <p>5 the purposes of my report for the analyses that emerge</p> <p>6 from my report that are summarized in the executive</p> <p>7 summary and in the tables and so forth and throughout</p> <p>8 the text, so I -- that is an assumption that I make in</p> <p>9 my report. What I will say about that issue later</p> <p>10 it's hard for me to speculate now at this point.</p> <p>11 Q. Have you done any analysis, reviewed the</p> <p>12 factual record, to determine if Medicare or Medicaid</p> <p>13 programs would have used the prices that you calculate</p> <p>14 in your report?</p> <p>15 MS. THOMAS: Objection.</p> <p>16 A. Well, I have observed in the data that when</p> <p>17 the prices reported in First Databank and in the Red</p> <p>18 Book changed for the Abbott products at issue in this</p> <p>19 case that Medicaid reimbursement and subsequently</p> <p>20 Medicare reimbursement did decline. So that is an</p> <p>21 example of one kind of thing that I did to -- does</p> <p>22 that represent everything that I've done, I'm not</p> |
| Page 215 | Page 217 |
| <p>1 approach that I used here.</p> <p>2 Q. Are you providing expert opinion in this</p> <p>3 case on whether the state Medicaid programs or</p> <p>4 Medicare would have used the alternative prices that</p> <p>5 you calculate in your report?</p> <p>6 MR. LAVINE: Objection to form.</p> <p>7 A. It is my understanding -- and I try to be</p> <p>8 specific about this in my report. It is my</p> <p>9 understanding that -- it is my assumption that if</p> <p>10 Abbott had reported alternative prices to First</p> <p>11 Databank as I described in my report and to the Red</p> <p>12 Book that state Medicaid agencies and Medicare</p> <p>13 insurance carriers would have used those prices when</p> <p>14 adjudicating Medicaid and Medicare claims. That is a</p> <p>15 sort of -- that is an assumption that I am making in</p> <p>16 my report. And I try to be clear about that.</p> <p>17 Q. Yes, you are. And I did get that. I just</p> <p>18 wanted to make sure that I have it.</p> <p>19 A. Yeah.</p> <p>20 Q. The question of whether Medicare and</p> <p>21 Medicaid would have used the revised pricing is an</p> <p>22 assumption in your report, correct? It's not a</p> | <p>1 sure. I would need to go back and look at it.</p> <p>2 But that's certainly consistent with what</p> <p>3 one would expect given that assumption Medicaid</p> <p>4 spending for Abbott products declined -- for the 44</p> <p>5 Abbott products declined from -- in 2000 and</p> <p>6 especially 2001, with the details of that varying a</p> <p>7 bit.</p> <p>8 Q. You mentioned something that you saw or did</p> <p>9 on that point whether or not the Medicare and Medicaid</p> <p>10 programs would have used those prices. Have you done</p> <p>11 the analysis you believe would be necessary as an</p> <p>12 economist to provide an expert opinion on whether the</p> <p>13 Medicare and Medicaid programs would have used the</p> <p>14 prices that you calculate in your report?</p> <p>15 MR. LAVINE: Objection to form.</p> <p>16 A. I'm confused by that question. Maybe you</p> <p>17 can ask it again. I'm not trying to be difficult.</p> <p>18 It's just a long day.</p> <p>19 Q. Have you done the analysis you believe</p> <p>20 would be necessary as an economist to provide an</p> <p>21 expert opinion on whether Medicare and Medicaid would</p> <p>22 have used the revised prices that you calculate in</p> |

55 (Pages 214 to 217)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com